IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 437 OF 1999
IN
NOTICE OF MOTION NO.1470 OF 1998
IN
SUIT NO.1334 OF 1998

Owen Richard Bernard Roncon
of Mumbai, Indian Christian
Inhabitant, presently residing
at Rajiv Nagar, Plot No.11,
Village Lohegaon, (Opposite
Shuttle Club and Ashok Samrat
Complex, Pune-411 014. .. Appellant
(Orig.Respondent)

v/s.

Mary Philomena alias Millie
Roncon nee D'Souza of Mumbai,
Indian Christian Inhabitant,
residing at Estandre Apartments,
Flat No.17, 1A, St.John
Baptist Road, Bandra (West),
Mumbai-400 050. .. Respondent
(Orig.Petitioner)

Mr.N.G.Raut for appellant.

Mr.M.C.Shah i/by Mr.E.Anandan for respondent.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 24th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

This appeal is directed against the order dated March, 11, 1999 whereby the learned motion Judge has directed the present appellant to pay alimony pendente lite to the respondent at the rate of Rs.8000/- per month from the date of the order.

2. The appellant and the respondent are husband and wife. They married on 6th October, 1963. Two

children are born out of the wedlock. Since 1976, the parties are living separately. The husband is said to have retired from Air India as senior manager while the wife retired from the service of I.T.C. Ltd. somewhere in the year 1992. The wife filed a suit on 11th March, 1998 against the husband before this court claiming a decree of judicial separation under section 22 of the Indian Divorce Act, 1869. In the month of April, 1998, the wife took out notice of motion claiming alimony pendente lite at the rate of 23,964/- per month from the date of the petition and litigation expenses in the sum of Rs.10,000/-. The notice of motion was contested by the husband. As noticed above, the learned motion Judge awarded alimony pendente lite at the rate of Rs.8000/- per month from the date of the order. It is this order which is under challenge.

3. The learned counsel for the appellant canvassed before us that the alimony pendente lite at the rate of Rs.8000/- is arbitrary and exorbitant. He would contend that the wife was employed in the reputed company like I.T.C.Ltd. and has sufficient income to sustain her. The learned counsel would submit that the husband had retired and the documents relating to his retiral benefits and the income-tax return would show that the husband's post-retirement income is only around Rs.8000/- per

month. The learned counsel took us through the available material including the documents of the Air India Ltd. relating to the husband's provident fund settlement and final settlement dues, the income-tax return for the assessment years 1997-98 and 1998-99. He also invited our attention to the bank pass-book of the wife to demonstrate that the withdrawals by her were not much indicating that she has some other source of income.

4. On the other hand, the learned counsel for the wife justified the order passed by the learned motion Judge.

5. We considered the rival submissions and perused the impugned order and the available material. According to the wife, the husband owns large properties at Alibag, Lonawala, Goa, Madras, Mumbai and Pune. The husband though denied that he owned the properties as alleged by the wife but admitted that he owned the flat No.5, Gulmohar but that was sold in year the 1994 and the property was purchased at Pune. He admitted that he owned the bungalow at Alibag. He has also admitted a plot of land at Pune having a badminton court owned by him and his second wife. Though wife has alleged that the husband owns two cars, the husband admitted that one car is owned by him. From the documents produced by the husband, it transpires that a sum

exceeding Rs.8,00,000/- was received him towards post-retiral benefits. Even after retirement, the income-tax return filed by the husband for the assessment year 1998-99 would show that the husband had gross total income of Rs.3,22,846/-in that year. On the other hand, the income-tax return of the wife for the assessment year 1997-98, reveals that she has total income of Rs.56,184/- only in that year. The income of the wife is inadequate and insufficient for the sustenance and survival. The wife has given the details of the monthly expenses in the affidavit in support of the notice of motion. According to her, her actual monthly expenses exceed Rs.23,000/-. Even if the monthly expenses as claimed by the wife are not accepted, we find that for the expenditure that is incurred by the wife on telephone, electricity, gas, food, servant, clothing, medical expenses etc., the award of interim maintenance at the rate of Rs.8000/- cannot be said to be exorbitant. Looking to the overall facts and circumstances of the case, the interim maintenance granted by the learned Judge at the rate of Rs.8000/- per month from the date of the order does not appear to be unreasonable and therefore, does not call for any interference in appeal.

6. Appeal is, accordingly, dismissed with cost.

The cost is quantified at Rs.5000/-.

7. We are informed that during the pendency of the appeal, the appellant has paid the interim maintenance at the rate of Rs.5000/- per month. The balance amount of interim maintenance as per the impugned order shall be paid by the husband in 12 monthly instalments alongwith monthly maintenance pendente lite.

Certified copy expedited.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)